

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

Plaintiff,

v.

M. JOHNSON, et al.,

Defendants.

CASE NO. 1:05-cv-00086-OWW-NEW (DLB) PC

ORDER DENYING MOTION FOR ENTRY OF
DEFAULT

(Doc. 71)

Plaintiff Bryan E. Ransom ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On September 7, 2007, plaintiff filed a motion seeking the entry of default against defendants Diggs, L'Etoile, Garcia, Williams, Madreno, and Canton.

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). As plaintiff has already been advised by this court, on June 1, 2007, the court issued an order directing the United States Marshal to *initiate* service. Until defendants have either waived service and failed to respond within sixty days or been personally served and failed to respond within twenty days, they are not in default and plaintiff is not entitled to entry of default.

In this instance, defendant Diggs waived service. Doc. 64. However, his response is not due until September 27, 2007. Fed. R. Civ. P. 4(d), 6(e); Doc. 64. The other five defendants

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1 have not waived service and have not been personally served. Plaintiff is not entitled to entry of
2 default against any of these six defendants, and his motion shall be denied.

3 Plaintiff's assertion that the Marshal failed to return individual USM forms for each
4 defendant is without merit. For those defendants for whom there are not yet returns of service in
5 the record, service is still in process.¹ Plaintiff may not assume they have been served and he is
6 entitled to entry of default. The court will address those defendants whom the Marshal was not
7 able to locate in due course.²

8 Plaintiff's motion seeking the entry of default, filed September 7, 2007, is HEREBY
9 DENIED.

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11 IT IS SO ORDERED.

12 **Dated: September 10, 2007**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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¹ Defendants L'Etoile, Williams, and Madreno.

28 ² Defendants Canton and Garcia. Docs. 69, 70.